

SETTLEMENT AGREEMENT

I. Parties

This Settlement Agreement ("Agreement") is entered into on this 12th day of December, 1996, by and between the United States of America, acting through the Civil Division of the Department of Justice and the Office of Inspector General of the United States Department of Health and Human Services ("HHS") (collectively referred to as the United States or the Government) and David McBroom ("McBroom"), a defendant in the below noted civil False Claims Act qui tam action.

II. Preamble

As a preamble to this Agreement, the United States and McBroom agree to the following recital of facts:

1. On or about May 27, 1993, pursuant to 31 U.S.C. § 3730, Relator filed, under seal and on behalf of the United States, a lawsuit in the United States District Court for the District of Utah, United States ex rel. Vanita Miller v. Health Financial Services et al., Civil Action No. 93 C 503W ("Civil Action 93 C 503W").

2. In her complaint, Relator alleges, inter alia, that David McBroom, as a principal officer and owner of Health Financial Services, Inc. ("HFS"), a management consulting firm which provided administrative assistance to home health agencies, caused ten home health agencies to submit false claims for payment under Part A of the Medicare Program. More specifically, Relator alleges that the home health agencies, in cost reports prepared by McBroom and HFS, sought reimbursement from Medicare

for: (1) salaries paid to phantom employees, (2) fees paid for services provided by related companies without disclosing the relationship, and (3) payments that were induced by kickbacks.

3. Defendant McBroom submitted or caused to be submitted claims for payment to the Medicare program, Title XVIII of the Social Security Act, 42 U.S.C. § 1395 et seq., which is administered by HHS.

4. In a separate plea agreement executed contemporaneously herewith, defendant McBroom has agreed with the United States to plead guilty to an information charging several criminal violations as set forth with more specificity in the Plea Agreement.

5. The United States contends that McBroom is liable under the False Claims Act, 31 U.S.C. § 3729 et seq., the Civil Monetary Penalties Law, 42 U.S.C. § 1320a-7a, the Program Fraud Civil Remedies Act, 31 U.S.C. § 3801-3812, and under common law for damages and penalties for the conduct set forth in Civil Action 93 C 503W.

6. Through civil forfeiture proceedings, the United States has seized from David McBroom \$219,474.53. Of that sum, \$146,057.78 has been forfeited to the Federal Bureau of Investigations ("FBI") and \$73,416.75 is still pending disposition. Of the forfeited \$146,057.78, HHS has received through a petition for remission \$32,639.76.

7. The United States and McBroom desire to reach an agreement that will settle, compromise and resolve the civil

liability issues and disputes between them, as alleged in Civil Action 93 C 503W. None of the other defendants in Civil Action 93 C 503W is covered by this Agreement.

III. Terms and Conditions

ACCORDINGLY, in reliance upon the representations contained herein and in consideration of the mutual promises, covenants and obligations in this Agreement and the resolution of the claims set forth below, and for good and valuable consideration, receipt of which is by each acknowledged, the United States and McBroom agree as follows:

Article I:

(a) In settlement of the civil claims set forth against David McBroom in Civil Action 93 C 503W, the United States has agreed to accept funds seized from David McBroom. Through civil forfeiture proceedings, the United States has seized \$219,474.53. Of that sum, \$146,057.78 has been forfeited to the FBI. Of those forfeited funds, HHS, as the victim of the alleged False Claims Act violations, already has received through a petition for remission \$32,639.76 for overpayments made to one of the home health agencies, Action Home Health (provider number 44-7419).

(b) Should the additional sum of \$73,416.75 that has been seized by the FBI in Salt Lake City, Utah, be forfeited to the United States, that sum will be added to the \$113,418.02 (those funds remaining from the originally forfeited sum of \$146,057.78) and become part of the funds to which HHS, as the victim, may seek remission.

(c) Only that portion of the forfeited funds HHS recovers from the FBI through the victim protection program will constitute the proceeds of this Agreement between the United States and David McBroom. Although the precise sum of the settlement proceeds must be determined at a later date, the proceeds will be no more than \$219,474.53 (the total amount seized) and no less than \$32,639.76 (the amount already remitted to HHS).

Article II: McBroom has provided sworn financial disclosure statements to the United States and the United States has relied on the representations therein in reaching this Agreement. McBroom warrants, covenants and agrees that the financial information provided to the United States is accurate and complete. McBroom further warrants, covenants and agrees that no funds or assets belonging to him exist which have not been disclosed, nor have funds been diverted from his income or been deferred in payment to him until after execution of this Agreement. In the event the United States discovers previously undisclosed assets of McBroom worth \$5,000.00 or more which existed at the time of execution of this Agreement, the United States may, at its option, (a) rescind this Agreement and reinstate its suit upon the underlying claims set forth in Civil Action 93 C 503W (in such event, McBroom waives all applicable statutes of limitation concerning such claims) or (b) let the Agreement stand and collect One Hundred percent (100%) of the assets previously undisclosed.

Article III: McBroom shall cooperate fully and in good faith with the Fraud Section of the Civil Division of the Department of Justice and the United States Attorney's Office for the District of Utah in the civil or criminal prosecution of any of the defendants named in Civil Action 93 C 503W by providing accurate, truthful, complete, and forthright information whenever, wherever to whomever, and in whatever form an attorney from the Fraud Section or the United States Attorney's Office or any Federal agent requests. The term "whatever form" includes, but is not limited to, being fully debriefed concerning his participation in and knowledge of any matters about which the Fraud Section or the United States Attorney's Office may inquire; providing oral responses to questions posed by attorneys from the Fraud Section or the United States Attorney's Office or agents of the United States; providing sworn, written statements; providing sworn testimony before a grand jury; providing sworn testimony in court; and providing documents which he has in his personal care, custody or control, or to which he has access. The term "whomever" includes, but is not limited to, Federal agencies. Should it be judged by the fraud Section or the United States Attorney that Mr. McBroom has failed to cooperate fully or has intentionally given false, misleading or incomplete information or testimony, or has committed or attempted to commit any further crimes, or has otherwise violated any provision of this agreement, Mr. McBroom shall thereafter be subject to prosecution for any criminal violation of which the fraud section or the

United States Attorney has knowledge, including, but not limited to, perjury, obstruction of justice, and false statements.

Article IV: Upon execution of this Agreement, pursuant to 31 U.S.C. § 3730 and Rule 41(a)(2) of the Federal Rules of Civil Procedure, the United States shall dismiss with prejudice those allegations against defendant David McBroom which are contained in Civil Action 93 C 503W.

Article V: Notwithstanding any term of this Agreement, specifically excluded and reserved from the scope and terms of this Agreement are any and all: 1) claims that may arise under Title 26, United States Code, or Internal Revenue Service regulations or under securities laws, 2) suspension and debarment rights of any federal agency, and 3) any claims based on such obligations as are created by this Agreement.

Article VI: McBroom agrees that all costs (as defined in the Federal Acquisition Regulations ("FAR") § 31.205-47 and as defined in Titles XVIII and XIX of the Social Security Act, 42 U.S.C. §§ 1395 et seq. and §§ 1396 et seq., and the regulations promulgated thereunder) incurred by or on behalf of McBroom, or any of his companies and their officers, directors, agents and employees in connection with (1) the matters covered by this Agreement, (2) the government's audit and investigations of the matters covered by this Agreement, (3) McBroom's investigation and defense of the matters covered by this Agreement and McBroom's corrective actions of the matters covered by this Agreement, (4) the negotiation of this Agreement, and (5) the

payments made to the United States pursuant to this Agreement shall be unallowable costs for government contract accounting and for Medicare and Medicaid reimbursement purposes. These costs shall be separately accounted for by McBroom. Any sums owed by McBroom to the United States for payments made to McBroom by Medicare and/or Medicaid (federal share) for costs which are unallowable (as defined in this paragraph) shall be paid by McBroom to the United States Department of Health and Human Services at its direction.

Article VII: Each person who signs this Agreement in a representative capacity warrants that he or she is duly authorized to do so.

Article VIII: This Agreement shall become final and binding only upon signing by each respective party hereto.

Article IX: The parties have executed two identical copies of this Agreement, each of which shall be deemed an original.

AGREED AND EXECUTED by the parties hereto:

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ON BEHALF OF THE UNITED STATES OF AMERICA:

Dated:

11/20/96



LUCY ELDRIDGE
Trial Attorney
Commercial Litigation Branch
Civil Division
U.S. Department of Justice
P.O. Box 261
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Washington, D.C. 20044

Dated:

11.27.96



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ON BEHALF OF THE DEFENDANT DAVID MCBROOM:

Dated: 12/12/96

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Dated: 12/12/96

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